

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 4 2000

PATRICK FISHER
Clerk

CARL D. UNDERWOOD;
DOLORES A. UNDERWOOD,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Nos. 99-9015 & 99-9016
(T.C. Nos. 1356-89 & 37159-86)
(Petition for Review)

ORDER AND JUDGMENT *

Before **EBEL** , **KELLY** , and **BRISCOE** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

In these consolidated cases, petitioners appeal from the Tax Court's decision that they owed deficiencies for the taxable years 1979, 1981 and 1982. The deficiency determinations were based on the Commissioner's disallowance of deductions claimed by petitioners arising out of investments in oil and gas limited partnerships.

On review, petitioners present one argument: the Tax Court erred in finding that the profit motive is properly determined at the partnership level. They maintain that the individual partner's profit motive is the relevant inquiry under 26 U.S.C. § 183 and the applicable regulations.

We review this legal question of statutory interpretation *de novo*. See *True Oil Co. v. Commissioner*, 170 F.3d 1294, 1298 (10th Cir. 1999). We have held that in determining whether activities were engaged in for profit for purposes of 26 U.S.C. § 183, "we look to the economic motive of the partnership, not the individual investor." *Hildebrand v. Commissioner*, 28 F.3d 1024, 1027 (10th Cir. 1994) (citing *Cannon v. Commissioner*, 949 F.2d 345, 349 (10th Cir. 1991)). This panel cannot overturn the decision of another panel of this court. See *United States v. Nichols*, 169 F.3d 1255, 1261 (10th Cir.), *cert. denied* 120 S. Ct. 336

(1999). Consequently, petitioners' argument against established law in this circuit must fail. The petition for review of the Tax Court's decision is DENIED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge